

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CAITLIN M. GREY,

Plaintiff,

v.

JONAS JOHANSSON, *as Executor*
of the ESTATE of LAURA BRINDLE
JOHANSSON, and INDIVIDUALLY,

Defendant.

HONORABLE JEROME B. SIMANDLE

Civil Action
No. 13-7497 (JBS/KMW)

OPINION

APPEARANCES:

Caitlin M. Grey
935 Trellis Lane
West Chester, NJ 19382
Pro Se Plaintiff

Stephen R. McDonnell, Esq.
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Attorney for Defendant

SIMANDLE, Chief Judge:

I. INTRODUCTION

This matter comes before the Court by way of Plaintiff Caitlin M. Grey's (hereinafter, "Plaintiff") motion to remand [Docket Item 5] and Defendant Jonas Johansson's (hereinafter, "Defendant") motion to dismiss [Docket Item 4]. This action arises out of the last will and testament of Laura Brindle Johansson (hereinafter, "Johansson"), Defendant's now deceased spouse. In her complaint, Plaintiff, Johansson's former

attorney, seeks a judgment declaring Johansson's will valid in its entirety, and particularly to the extent the will conferred on Plaintiff the continuing right to possess one of Johansson's horses, Navarra D (hereinafter, "Navy"). Plaintiff also asserts a quantum meruit claim for the value of services she provided in connection with Navy and, relatedly, seeks reimbursement for costs and expenses associated with Navy's maintenance and care. Defendant removed this action from the New Jersey Superior Court, Chancery Division. The issue before the Court is whether the Court may exercise subject matter jurisdiction over Plaintiff's claims.

As explained below, the Court finds that the probate exception to federal diversity jurisdiction bars this action from proceeding in Federal Court. Plaintiff's motion to remand will accordingly be granted, and Defendant's motion to dismiss will be dismissed as moot.

II. BACKGROUND

A. Plaintiff's Complaint

Laura Brindle Johansson died on February 9, 2009, survived by her husband, Defendant Jonas Johansson. (Compl. [Docket Item 1-3], ¶ 1.) On or about March 17, 2009, Defendant filed an application in the Salem County Surrogate's Court to admit Johansson's will to probate and to appoint Defendant executor of Johnasson's estate. (Id. at ¶¶ 2-6.) The Salem County

Surrogate issued an "Executor Short Certificate" on April 6, 2009, admitting Johansson's will to probate, and "duly" authorizing Defendant to administer the estate. (Id. at ¶ 7.) Johansson's will devised, among other bequests, all "personal effects, jewelry, household effects, furniture, automobiles[,] and "like" articles to Defendant, but directed Johansson's "attorney, [Plaintiff] Caitlin M. Grey, Esquire, to sell or adopt out or otherwise dispose" of Johansson's horses at Plaintiff's "sole discretion." (Id. at ¶ 8.) The will specifically directed Plaintiff to place the animals in a setting deemed "preferable" and in the horses' "best interests[]" irrespective of the income derived from the sales and/or placements of the horses. (Id. (emphasis omitted).)

In accordance with the provisions of the will, Plaintiff alleges that Defendant "sought and then followed" her "advice and recommendations" with respect to the horses, and specifically approved sales by Plaintiff of three of Johansson's ten horses, namely, Winter Storm Warning, Rudy, and Ricki. (Id. at ¶¶ 9-10.) Rather than arrange a sale of Navy, however, Plaintiff, purportedly at Defendant's direction and with his express authorization, transported Navy from Defendant's home in Woodstown, New Jersey, to a more suitable stable in Nottingham, Pennsylvania. (Id. at ¶ 12.) By letter dated August 15, 2009, Plaintiff addressed the disposition of Johansson's horses, and

specifically discussed Plaintiff's "general" opposition to the sale of Navy. (Id. at ¶¶ 16-18.) Plaintiff further asserted at that time that Johansson purchased Navy with "personal monies" received from Johansson's father, rather than marital assets. (Id. at ¶ 19.) Defendant allegedly never responded to Plaintiff's correspondence (nor objected to any of the assertions set forth therein), but instead "acted and continued to act" in accordance with Plaintiff's advice. (Id. at ¶¶ 20-27.)

On October 24, 2013, Defendant filed "an Emergency ex Parte Petition for Injunctive Relief" in the Court of Common Pleas of Chester County, Pennsylvania. (Id. at ¶ 29.) Defendant generally alleges in the pending state court action that Defendant "'jointly owned'" Navy with Johansson, and accordingly, that Navy passed to Defendant outside of Johansson's will. (Id. at ¶ 30.) Defendant therefore contends that Johansson's will is "'void as a matter of law'" to the extent the will directs Plaintiff "to 'sell or adopt out or otherwise dispose' of" Navy. (Id. at ¶ 31.) Defendant thereafter filed a "Complaint in Replevin" in the state court action in order to recover possession of Navy—the horse Defendant now contends he owns without limitation. (Id. ¶ 32.)

In the complaint in this action, Plaintiff seeks a declaratory judgment finding Johansson's will valid in all

respects, particularly to the extent the will provided for the disposition of Johnasson's horses. (Compl. [Docket Item 1-3], 8.) Plaintiff further seeks a declaration that ownership of the horses "did not pass to Defendant" by operation of law, and that Plaintiff's "present and continuing possession" of Navy is therefore "proper and lawful." (Id.) Plaintiff also seeks an order directing Defendant Johansson to compensate Plaintiff in quantum meruit for the value of Plaintiff's work and services related to the disposition of Johansson's horses. (Id. at 9-10.) Finally, in the event the Court finds Defendant the rightful owner of Navy, Plaintiff seeks reimbursement for the costs and expenses incurred in caring for Navy. (Id. at 10-11.)

B. Removal

Plaintiff filed this action in the Superior Court of New Jersey, Chancery Division, on November 18, 2013. Defendant timely removed this action on December 2, 2013.¹

Defendant's notice of removal alleges that the Court possesses jurisdiction over this litigation pursuant to 28 U.S.C. § 1332, in light of the parties' diverse state citizenship. (Notice of Removal [Docket Item 1], ¶¶ 6, 8.) Defendant also asserts that Plaintiff's demand for compensation

¹ Defendant also asserts that Plaintiff's service by mail of her state court complaint "constitutes defective service," but that Defendant accepts service "for the sake of expediency[.]" (Id. at ¶ 12.)

and reimbursement arising out of costs and expenses "she incurred caring for Navy" exceeds the statutory amount in controversy. (Id. at ¶ 7.)

III. MOTION TO REMAND

A. Parties' Arguments

Plaintiff argues that this action should be remanded because counsel for Defendant purportedly effectuated removal of this action through criminal and/or unethical behavior. (Pl.'s Mot. to Remand [Docket Item 5], 1-11.) Plaintiff specifically asserts that Stephen G. Rhoads, Esquire, and John E.D. Larkin, Esquire² (hereinafter, "pro hac counsel")—counsel who signed and filed the notice of removal in this action—lack "plenary" licenses in the State of New Jersey and, therefore, committed the unauthorized practice of law through removal of this litigation.³ (Id.) Plaintiff further asserts that the claims in

² Plaintiff also asserts that Stephen R. McDonnell, Esquire, ratified and/or promoted pro hac counsel's unauthorized practice of law through sponsoring their applications to appear *pro hac vice* in this action. (Pl.'s Mot. to Remand [Docket Item 5], 9, 11-12.)

³ This is not the first occasion in which Plaintiff has asserted that counsel for Defendants committed a litany of ethical breaches in connection with the removal of this action to Federal Court. Indeed, Plaintiff vigorously opposed on that basis pro hac counsels' applications to appear pro hac vice in this action. (See generally Pl.'s Opp'n to Def.'s Mot. for *Pro Hac Vice* Admission [Docket Item 14].) By Order dated May 6, 2014, the Honorable Karen M. Williams, United States Magistrate Judge, found troubling pro hac counsels' pre-admission filing of the removal notice, but ultimately concluded that their admission pro hac vice better comported with the interests of

this action solely concern "the proper construction and interpretation of a New Jersey will[.]" (Pl.'s Mem. of Law in Supp. of Mot. to Remand [Docket Item 5-1], 12-13.) Indeed, Plaintiff asserts that "a simple reading of the pleading" demonstrates that she only "seeks clarification, construction, interpretation and enforcement of the terms" of Johansson's Will. (Pl.'s Am. Reply to Def.'s Opp'n to Pl.'s Mot. to Remand (hereinafter, "Pl.'s Reply") [Docket Item 16], 7.) Plaintiff therefore claims that this litigation constitutes "purely a matter" of probate and "falls squarely within the probate exception to federal jurisdiction[.]" (Id. at 13-14.) Plaintiff also disputes the Court's jurisdiction in this action on the basis that Defendant's notice of removal fails to sufficiently demonstrate that the amount in controversy exceeds the jurisdictional minimum. (Id. at 8-10; see also Pl.'s Reply [Docket Item 16], 6.)

Defendant asserts in opposition that the probate exception has no application to this declaratory judgment action, in light of the fact that Plaintiff's claims purportedly concern a nonprobate, "marital asset" that passed to Defendant by

justice and with resolving the merits of the underlying dispute. (Order [Docket Item 20], May 6, 2014, 3-5.) This Court equally declines to countenance the filing of pleadings by attorneys not admitted before the bar of this Court, but finds Plaintiff's arguments in this regard unconvincing as a basis to remand since counsel has been pro hac vice.

operation of law at Johansson's death. (Def.'s Memo. of Law in Supp. of his Response to Pl.'s Mot. to Remand (hereinafter, "Def.'s Opp'n") [Docket Item 9], 7-8.) Defendant therefore argues that this action constitutes little more than the claim of a creditor, because Plaintiff seeks an adjudication of Navy's "legitimate possessor based on a *previously* probated will." (Id. at 8 (emphasis in original).) Defendant further asserts that Plaintiff's alternative demand for reimbursement of expenses underscores the "inapplicability of the probate exception" because Plaintiff's alternative claim—sought only to the extent the Court concludes that "'ownership'" of Navy vested in Defendant outside of Johansson's will—constitutes a concession that Navy constitutes "a nonprobate asset." (Id. (citation omitted).) With respect to the amount in controversy, Defendant concedes that neither the notice of removal nor Plaintiff's complaint provide a clear delineation of the amount in dispute in this litigation. (Id. at 4-6.) Rather, Defendant asserts that this action "satisfies" the amount in controversy requirement because Plaintiff certified in the Pennsylvania state court action that the value of Navy and the value of the expenses incurred in caring for Navy amounted in the aggregate to more than \$250,000. (Id. at 5-6, 8.)

B. Standard of Review

It is well settled that “[o]nly state-court actions that originally could have been filed in federal court” may properly be removed. Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987) (citing 28 U.S.C. § 1441(a)). Indeed, 28 U.S.C. § 1441(a) expressly provides that, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing” the pending action. 28 U.S.C. § 1441(a). Removal statutes, however, are to be strictly construed, and any doubt with respect to the propriety of removal should be resolved in favor of remand. See, e.g., Brown v. Jevic, 575 F.3d 322, 326 (3d Cir. 2009); Boyer v. Snap-on Tools Corp., 913 F.2d 108, 111 (3d Cir. 1990). Consequently, “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c).

C. Probate Exception to Federal Jurisdiction

The “‘probate exception’ to diversity jurisdiction” constitutes “a jurisdictional limitation” on federal courts’ ability to entertain certain diversity suits. Three Keys Ltd. v. SR Util. Holding Co., 540 F.3d 220, 226 (3d Cir. 2008). Indeed, the Supreme Court has expressly recognized that the

"'probate exception'" precludes, under certain circumstances, an "otherwise proper" exercise of federal jurisdiction. Marshall v. Marshall, 547 U.S. 293, 308 (2006). Under this exception, a federal court generally lacks "jurisdiction to probate a will or [to] administer an estate" and may not exercise jurisdiction in a manner which "disturb[s] or affect[s] the possession of property in the custody of a state court[.]" Markham v. Allen, 326 U.S. 490, 494 (1946). Though "the precise contours of the probate exception" remained initially unclear, the Supreme Court in Marshall v. Marshall provided an unequivocal indication that the exception narrowly applies under specific circumstances. Berman v. Berman, No. 07-2506, 2009 WL 1617758, at *2 (D.N.J. June 9, 2009). In essence, the probate exception "reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate[.]" Marshall, 547 U.S. at 311. The exception leaves unaltered, however, the ability of federal courts to "adjudicat[e] matters outside [of] those confines and otherwise within federal jurisdiction." Id. at 312. In light of Marshall, the Court of Appeals succinctly stated in Three Keys Limited v. SR Utility Holding Company that the probate exception applies where an action "endeavor[s] to: (1) probate or annul a will, (2) administer a decedent's estate, or (3) assume in rem jurisdiction over property" that remains in the custody of the state probate court. Three Keys, 540 F.3d at

227. In evaluating the third prong of the probate exception, the Three Keys court instructed that courts must appreciate "the distinction between an in personam action seeking a judgment that a party has the right to a distributive share of an estate," and an in rem action that "seeks a determination of a party's interest" in specific estate property. Id. at 230. The court noted, however, that "an action 'to dispose of property that is in the custody of a state probate court'" involves "at a minimum" the assumption of "in rem jurisdiction over that property." Id. at 229.

D. Analysis

The Court will grant Plaintiff's motion to remand. Plaintiff's complaint in this instance squarely seeks a declaratory judgment concerning the validity and effect of Johansson's will. (See generally Compl. [Docket Item 1-3], 8 (requesting a judgment declaring, among other things, Johansson's will "valid").) Defendant, by contrast, seeks a determination that Johansson's will contains in part an *invalid* provision, and that Plaintiff's claims concern "marital assets" that never comprised a portion of Johansson's estate, but instead "passed" to Defendant by operation of law. (Def.'s Opp'n [Docket Item 9], 7-8.) The probate exception, however, expressly bars federal courts from entertaining actions to "probate or annul a will" or "to administer a decedent's

estate[.]” Marshall, 547 U.S. at 311. Courts have correspondingly recognized that this prohibition bars federal jurisdiction “over any claims for relief” or “theor[ies] of recovery” that require a determination concerning the validity and/or construction of a testamentary document. Rothberg v. Marger, No. 11-5497, 2013 WL 1314699, at *6-*7 (D.N.J. Mar. 28, 2013). Because the parties to this action expressly seek an adjudication of the validity of the underlying will, it is readily apparent that the first prong of the probate exception, proscribing federal courts from “endeavoring to ... probate or annul a will,” Three Keys, 540 F.3d at 227, applies to this action. Indeed, a majority of the relief that Plaintiff seeks expressly calls upon the Court to make determinations concerning subject matter over which this Court lacks jurisdiction. Plaintiff seeks, for example, in Count One an order: (1) declaring Johansson’s will “in all respects and in each particular provision” valid; (2) declaring that Johansson’s will expressly excepted her horses from the personal possessions bequeathed to Defendant; (3) declaring that the horses owned by Johansson did not pass to Defendant by operation of law; (4) declaring the manner in which Johansson’s will “obligate[s], require[s] and direct[s]” Defendant to administer Johansson’s estate; and (5) declaring Plaintiff’s possession of Navy “proper” and in accordance with the applicable provisions of

Johansson's will. (Id. at 9.) In the alternative, but *only* to the extent the Court finds certain provisions of Johansson's will *invalid*, Plaintiff seeks in Count Three reimbursement for the expenses and costs "incurred in the care and keeping of" Navy. (Id. at 11.) Notwithstanding the posture of the probate proceedings, the judgment sought by Plaintiff with respect to these Counts therefore directly concerns the construction, interpretation, and *validity* of Johansson's will—the adjudication of which would require the Court to "probate or *annul*" the will. Three Keys, 540 F.3d at 227 (emphasis added).

Moreover, in light of the parties' dispute concerning whether Navy constitutes a marital or probate asset, (see generally Def.'s Opp'n [Docket Item 9]), resolution of Plaintiff's claims further require the Court to determine whether Navy constitutes an estate asset, the precise sort of estate administration similarly proscribed by the second prong of the probate exception. See Estate of Czarnetzki v. Andrews, No. 12-6923, 2012 WL 5869159, at *2 (D.N.J. Nov. 19, 2012) (dismissing plaintiff's complaint for lack of subject matter jurisdiction where plaintiff's requested relief would require the court to determine "what belongs to the [e]state") (citations omitted). In that regard, the Court finds Defendant's arguments to the contrary unpersuasive. (See generally Def.'s Opp'n [Docket Item 9].) Rather, the Court

concludes that the testamentary validity claims at issue in this litigation clearly lie at the core of state probate, and therefore exceed the Court's jurisdiction. See Solow v. Berger, No. 10-2950, 2011 WL 1045098, at *2 (E.D. Pa. Mar. 22, 2011) (finding jurisdiction over plaintiff's fraudulent misrepresentation claim barred by the first prong of the probate exception because plaintiff's theory of recovery would require findings concerning a will's validity); Bosley v. Bosley, No. 07-1380, 2008 WL 2048665, at *4 (M.D. Pa. May 12, 2008) (noting that the probate exception aims "to ensure that all probate matters are managed by a single, specialized court").

With respect to Count Two of Plaintiff's complaint, the Court notes that Plaintiff seeks compensation in quantum meruit for the value of services Plaintiff provided in accordance with Johansson's will. (See Compl. [Docket Item 1-3], 9-10.) The crux of this claim, however, similarly turns on the validity of Johansson's will to the extent that Defendant argues that the provisions with respect to Plaintiff contravene public policy and/or concern purportedly nonprobate assets. (See generally Def.'s Opp'n [Docket Item 9].) Consequently, even if construable in part as the claim of a creditor, any adjudication of Plaintiff's quantum meruit claim relies upon an evaluation of the validity of Johansson's will. The overall claims in this litigation, irrespective of characterization, therefore require

the Court to “endeavor[]” to make inquiry into subject matter expressly precluded by the probate exception.⁴ Three Keys, 540 F.3d at 227; see also N.J. ex rel. McDonald v. Copperthwaite, No. 13-5559, 2014 WL 2208159, at *13 (D.N.J. May 28, 2014) (finding that, “[b]y seeking a declaration of an exclusive right in specific property,” plaintiff “crossed the line into the realm of the probate exception[,]” despite the fact that plaintiff also sought an in personam award of damages) (emphasis in original).

IV. CONCLUSION

For the reasons stated above, the Court will grant Plaintiff’s motion to remand [Docket Item 4], and dismisses as moot Defendant’s motion to dismiss [Docket Item 4]. An accompanying Order will be entered.

August 26, 2014
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
Chief U.S. District Judge

⁴ Having concluded that the probate exception precludes the exercise of diversity jurisdiction in this action, the Court need not consider the arguments proffered in connection with Defendant’s motion to dismiss. Rather, the Court shall dismiss the motion as moot.